

MAR 20 2013

PTO/SB/85 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)
2015.1019

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at
(571) 272-3282.

Patent Number: 6,716,619Application Number: 09/779,187Issue Date: April 6, 2004Filing Date: February 8, 2001

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

01 FC:1599 2690.00 DA 67 6619

Also complete the following information, if applicable:

The above-identified patent:

- ☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

March 20, 2013

/Donna T. Ward/

Date

Signature

Donna T. Ward., Ph.D., J.D.

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input checked="" type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input checked="" type="checkbox"/> \$ <u>565</u>	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1,425</u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☒ Please charge Deposit Account No. 50-5211 the sum of \$ 2,840
- ☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 50-5211

[Page 2 of 4]

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0851-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 50-5211

OR

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

March 20, 2013

Date

Paula C. Evans

Typed or printed name(s)

32503

Registration Number, if applicable

46 Elm Street

Address

(413) 749-4705

Telephone Number

Pittsfield, MA 01201

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Exhibit A, Exhibit B and Exhibit C

PTO/SB/65 (03-06)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Donna T. Ward/

Signature

March 20, 2013

Date

Donna T. Ward, Ph.D., J.D.

Type or printed name

48271

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See Attached

(Please attach additional sheets if additional space is needed)

[Page 4 of 4]

PATENT AND TRADEMARK
DIVISION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED APPLICANT: Patrick J. Muraca
PATENT NO.: 6,716,619
ISSUE DATE: April 6, 2004
TITLE: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
EXAMINER: Beisner, William H
GROUP ART UNIT: 1744
CONF. NO.: 5622
ATTY. DKT. NO.: 2015.1019

CERTIFICATE OF TRANSMITTAL BY FACSIMILE			
I hereby certify that this correspondence is being transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300, pursuant to 37 CFR 1.8(a)			
Date:	March 20, 2013	By:	/Donna T. Ward/

Attention: Office of Petitions
MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

COMMUNICATION

**FILED IN CONNECTION WITH TO PETITION ACCEPT UNAVOIDABLY DELAYED
PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Sir:

Petitioner hereby requests the U.S. Patent & Trademark Office revive the above-identified patent (herein, "the '619 patent") as a result of an unavoidable delay in payment of the maintenance fees.

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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I. OWNERSHIP

Petitioner is the sole owner of the '619 patent. The chain of title is provided in Exhibit A. Briefly, the '619 patent was assigned from the inventor, Patrick J. Muraca, to Clinomics Laboratories, Inc. on March 29, 2001 (reel/frame 011777/0684) and on April 20, 2001 (reel/frame 011755/0994). Clinomics Laboratories, Inc. changed their name to Clinomics Biosciences (herein, "Clinomcs") and recorded the change at the United States Patent and Trademark Office (USPTO) on January 16, 2001 (reel/frame 012623/0195). Clinomics assigned the '619 patent to Laurus Master Fund, LTD (herein, "Laurus") on March 28, 2005 (reel/frame 016446/0103) and Laurus assigned the '619 to Petitioner, Nuclea Biotechnologies, Inc. (herein, "Nuclea") on July 16, 2012 (reel/frame 028563/0231).

II. FACTS SUPPORTING GRANT OF PETITION TO REVIVE

The '619 patent issued on April 6, 2004 and the first maintenance fee was due with surcharge by April 6, 2008. The online transaction history indicates that a maintenance fee reminder was mailed by the USPTO on October 15, 2007 to the listed fee correspondence address of the law firm, SNR Denton US LLP (herein, "SNR") for the 3.5 yr fee, however, the maintenance fee was not paid. Consequently, since the 3.5 year payment was not made, no reminder was sent by the USPTO for the subsequent 7.5 year payment. The failure to pay both fees was unavoidable.

At the time the 3.5 year maintenance fee was due, the '619 patent was owned by Laurus Master Fund, LTD. As Mr. Rasmussen, Agent of the JOLs for Laurus, stated in his affidavit, attached here as Exhibit B, the SNR law firm was responsible for paying the maintenance fees for the '619 patent (Rasmussen Aff., Para. 4). According to Mr. Rasmussen, the failure to pay the maintenance fee was not only unintentional but unavoidable, due, in part, to the unfortunate circumstances surrounding the liquidation of the Laurus business entity. Laurus began preparations for liquidation in 2008 and the liquidation process has taken several years. A process that overlapped with the due dates of both the 3.5 year and 7.5 year maintenance fees of the '619 patent. The liquidation has taken several years and was still ongoing at the time the '619 patent was transferred to Nuclea. Notwithstanding the upheaval at Laurus, Mr. Rasmussen

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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has indicated that the SNR law firm had instructions and was responsible for payment of the '619 maintenance fees.

The attorney responsible for prosecuting the application that matured into the '619 patent at the SNR law firm, Ms. Paula Evans, confirms in her affidavit attached here as Exhibit C, that the SNR law firm did docket and track fees and payments due (Evans Aff., Para. 4). Attorney Evans has also stated that all due care was taken to review, docket and notify clients of such fees in the normal course of managing the intellectual property matters at SNR. Despite a system of checks and balances at the SNR law firm and the standing instruction to pay the maintenance fees, the '619 patent unavoidably lapsed. It should be noted that Attorney Evans left the SNR firm in October 31, 2006 and has served as in-house counsel at Nuclea since that time.

Upon the recent acquisition of the '619 patent on July 16, 2012, Attorney Evans discovered that the maintenance fees for both the 3.5 year and 7.5 year time periods had not been paid. Immediately upon this discovery, Attorney Evans took steps to correct the lapse in payment and update the correspondent fee address to DT Ward PC, counsel of record in this matter. Neither Mr. Rasmussen nor Attorney Evans was aware of the lapse when the '619 patent was assigned to Nuclea.

In view of the foregoing, Petitioner hereby requests that the '619 patent be revived and the Commissioner is hereby authorized to charge a surcharge after expiration fee of \$700, the 3.5 year maintenance fee for a small entity of \$565 plus a surcharge of \$75, the 7.5 year maintenance fee for a small entity of \$1,425 plus a surcharge of \$75 and any other necessary charges, or any credits, to Deposit Account No. 50-5211, with reference to Attorney Docket No. 2015.1019.

Date: March 20, 2013

Respectfully submitted,

Customer No.: 15092

/Donna T. Ward/
Donna T. Ward, Ph.D., J.D. (Reg. No. 48,271)
DT WARD PC
292 Main Street, Suite 2
Groton, MA 01450
Ph: (978) 448-8720
Fax: (978) 448-8721
dward@dtwardlaw.com

MAR 20 2013



United States Patent and Trademark Office

EXHIBIT A

[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Assignments on the Web > Patent Query****Patent Assignment Abstract of Title****NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.****Total Assignments: 5**Patent #: 6716619

Issue Dt: 04/06/2004

Application #: 09779187

Filing Dt: 02/08/2001

Inventor: Patrick J. Muraca

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS

Assignment: 1Reel/Frame: 012623/0195

Recorded: 02/14/2002

Pages: 11

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

Assignor: CLINOMICS LABORATORIES, INC.

Exec Dt: 01/16/2001

Assignee: CLINOMICS BIOSCIENCES, INC.

165 TOR COURT

PITTSFIELD, MASSACHUSETTS 01201

Correspondent: PALMER & DODGE LLP

PAULA CAMPBELL EVANS

111 HUNTINGTON AVENUE

BOSTON, MA 02199

Assignment: 2Reel/Frame: 011777/0684

Recorded: 05/04/2001

Pages: 3

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MURACA, PATRICK J.

Exec Dt: 03/29/2001

Assignee: CLINOMICS LABORATORIES, INC.

165 TOR COURT

PITTSFIELD, MASSACHUSETTS 01201

Correspondent: PALMER & DODGE LLP

PAULA CAMPBELL EVANS

ONE BEACON STREET

BOSTON, MA 02108

Assignment: 3Reel/Frame: 011755/0994

Recorded: 04/26/2001

Pages: 4

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MURACA, PATRICK J.

Exec Dt: 04/20/2001

Assignee: CLINOMICS LABORATORIES, INC.

165 TOR COURT

PITTSFIELD, MASSACHUSETTS 01201

Correspondent: PALMER & DODGE LLP

PAULA CAMPBELL EVANS

ONE BEACON STREET

BOSTON, MASSACHUSETTS 02108

Assignment: 4Reel/Frame: 016446/0103

Recorded: 04/13/2005

Pages: 9

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: CLINOMICS BIOSCIENCES, INC.

Exec Dt: 03/28/2005

Assignee: LAURUS MASTER FUND, LTD.

825 THIRD AVENUE, 14TH FLOOR
C/O LAURUS CAPITAL MANAGEMENT, LLC
NEW YORK, NEW YORK 10022

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Correspondent: AMY LEE BRADY
80 STATE STREET
6TH FLOOR
ALBANY, NY 12207

Assignment: 5

Reel/Frame: 028563/0231

Recorded: 07/17/2012

Pages: 3

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: LAURUS MASTER FUND, LTD.

Exec Dt: 07/16/2012

Assignee: NUCLEA BIOTECHNOLOGIES, INC.

105 SOUTH STREET
PITTSFIELD, MASSACHUSETTS 01201

Correspondent: PAULA C. EVANS
P.O BOX 501
NORTH READING, MA 01864

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Search Results as of: 06/17/2012 01:44 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 871-272-3350. v.2.3.2
Web Interface last modified: July 10, 2012 v.2.3.2

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EXHIBIT B

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED APPLICANT: Patrick J. Muraca
PATENT NO.: 6,716,619
FILING DATE: February 08, 2001
TITLE: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
EXAMINER: Beisner, William H
GROUP ART UNIT: 1744
CONF. NO.: 5622
ATTY. DKT. NO.: 2015.1019

**AFFIDAVIT IN SUPPORT OF PETITION TO ACCEPT UNAVOIDABLY DELAYED
PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Attention: Office of Petitions
MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Sir:

I, Cameron Rasmussen, declare that:

1. I am Agent of the Joint Official Liquidators (JOLs) for Laurus Master Fund, LTD (herein, "Laurus"). As Agent, I am responsible for managing the liquidation of Laurus business entity.
2. The above-mentioned patent, US 6,716,619 (herein, "the '619 patent") was acquired by Laurus on March 28, 2005 with the assignment recorded on 4/13/2005 (reel/frame 016446/0103).
3. Upon acquisition of the '619 patent from Clinomics Biosciences, Inc., Laurus retained the law firm SNR Denton US LLP (herein, "SNR") as counsel and the SNR law firm

EXHIBIT B

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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was listed as the correspondent for fee purposes with the United States Patent and Trademark Office.

4. It is my understanding that the SNR law firm was instructed to and was responsible for paying the maintenance fees for the '619 patent and that they would do so to ensure the patent remained in force.
5. In the spring of 2008, Laurus initiated preparation to liquidate the business entity.
6. Laurus formerly entered liquidation in September 2008. Liquidation of the business entity involved a great deal of valuation analysis with the goal of providing the most value to the owners and/or creditors of the business. It would have been counter to these objectives to have allowed any vested property rights lapse.
7. If a request for fee payment instructions was received by Laurus from the SNR firm during the liquidation process, it is possible that the request may have been overlooked by Laurus. Notwithstanding the foregoing, I am not aware of any such request and it is my understanding that the property of Laurus would have been maintained even in the absence of such a request.
8. On July 16, 2012 the '619 patent was assigned to Nuclea Biotechnologies, Inc. and the assignment recorded on July 17, 2012 (reel/frame 028563/0231) as shown in Exhibit A.
9. As of July 16, 2012, when the '619 patent was assigned to Nuclea Biotechnologies, Inc., I had no knowledge that the maintenance fees had not been paid or that the '619 patent was not in force.
10. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the revival of the '619 patent.

Respectfully submitted,


LAURUS MASTER FUND, LTD

EXHIBIT B

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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Date: March 1, 2013

Signature: 

Name: Cameron Rasmussen
Title: Agent of the JOLs

EXHIBIT C

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED APPLICANT: Patrick J. Muraca
PATENT NO.: 6,716,619
FILING DATE: February 08, 2001
TITLE: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
EXAMINER: Beisner, William H
GROUP ART UNIT: 1744
CONF. NO.: 5622
ATTY. DKT. NO.: 2015.1019

**AFFIDAVIT IN SUPPORT OF TO PETITION ACCEPT UNAVOIDABLY DELAYED
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Attention: Office of Petitions
MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Sir:

I, Paula Evans, Executive Vice President and General Counsel of Nuclea Biotechnologies, Inc.
(herein, "Nuclea"), declare that:

1. I was an attorney at the law firm Palmer & Dodge LLP and counsel of record for Clinomics Laboratories, Inc. and Clinomics Biosciences, Inc. from the start of prosecution of the application which matured into granted patent, US 6,716,619 (herein, "the '619 patent") on April 6, 2004 until October 15, 2005 when I left Palmer & Dodge.

EXHIBIT C

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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belief that this docketing system was utilized to manage the '619 patent until it was transferred to the law firm SNR.

3. On November 1, 2005 I began employment with the law firm Sonnenschein Nath & Rosenthal, LLP (now SNR Denton US LLP (herein, "SNR")) and the case file for the '619 patent was transferred to SNR coincident with my employment there.
4. While at the SNR law firm I have personal knowledge that the firm maintained a docketing system that tracked the payment of maintenance fees and notify clients as necessary in order to manage their intellectual property. It is my belief that this docketing system was utilized to manage the '619 patent at least until my departure on October 31, 2006.
5. On November 1, 2006, I moved from SNR to Nuclea where I currently serve as Executive Vice President and General Counsel.
6. Nuclea acquired the '619 patent on July 16, 2012 from Laurus Master Fund, Ltd. (herein, "Laurus"). At the time of acquisition, it was my belief that the patent was still in force. However, upon review of the '619 patent file, I discovered that the '619 patent was no longer in force due to the non-payment of the 3.5 year and the 7.5 year maintenance fees.
7. After making this determination, I took immediate steps to correct the non-payment of the maintenance fees for the '619 patent. To this end, I instructed DT Ward PC, patent counsel for Nuclea, to investigate revival of the '619 patent and to take any and all steps appropriate in a course of action to restore the patent to full force, including filing the instant petition.
8. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the revival of the '619 patent.

EXHIBIT C

Title: STYLET FOR USE WITH TISSUE MICROARRAYER AND MOLDS
Filed: February 8, 2001
Application No.: 09/779,187

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Respectfully submitted,

NUCLEA BIOTECHNOLOGIES, INC.

Date: March 19, 2013

Signature: Paula C. Evans

Name: Paula C. Evans

Title: Executive Vice President & General Counsel